

STATE OF MICHIGAN
COURT OF APPEALS

ROBIN LEE BAIRD-PETERSON,

Plaintiff-Appellee,

v

DAVID ERIC PETERSON,

Defendant-Appellant.

UNPUBLISHED

October 16, 2014

No. 319938

Marquette Circuit Court

LC No. 12-050558-DM

Before: MURPHY, C.J., and SAWYER and M. J. KELLY, JJ.

PER CURIAM.

In this appeal from a judgment of divorce, defendant, David Eric Peterson, appeals by right the trial court's allocation of parenting time and the division of the parties' marital estate. Specifically, Peterson maintains that the trial court erred when it granted him limited and undefined parenting time and erred when it failed to award him his share of the interest held by plaintiff, Robin Lee Baird-Peterson, in a limited liability company. Because we conclude there were no errors warranting relief, we affirm.

I. BASIC FACTS

Robin Baird-Peterson, nee Robin Baird, married David Peterson in March 1999. They were married in Florida and had two girls while living there. They separated in April 2010 after Baird-Peterson alleged that Peterson molested his daughters. Florida officials investigated the claims, but found them to be unsubstantiated. Baird-Peterson moved to Michigan with the children in June 2010. She sued Peterson for a divorce in July 2012.

In October 2012, the trial court entered an order granting temporary sole custody of the children to Baird-Peterson.

The trial court held a hearing on the divorce over two days in July 2013. The trial court entered its opinion and order concerning the division of the marital estate and addressing support and parenting time in August 2013.

In its August 2013 order, the court awarded sole custody of the children to Baird-Peterson and provided that parenting time with Peterson "may resume on a gradual basis." It further ordered that, until further order, the parenting time must be supervised, in Marquette, and could not be overnight. The court awarded the parties' home in Florida and one vehicle to

Peterson and divided the existing accounts equally. It then equalized the division by ordering Peterson to pay \$30,000 in cash to Baird-Peterson. The court recognized that Baird-Peterson had an interest in the Mather Inn business, which she obtained in part using \$30,000 of marital assets. The court stated that it was unclear whether she retained her interest and found, in any event, that the interest had no present value. It nevertheless ordered Baird-Peterson to reimburse Peterson for his half of the investment should Baird-Peterson eventually realize any return on the investment. The court also ordered Peterson to pay \$300 per month in spousal support for four years and to pay \$2,500 toward Baird-Peterson's attorney fees.

Baird-Peterson moved for clarification of the trial court's order in October 2013. After the trial court held a hearing on the motion, it entered an order of clarification in November 2013. In that order, the trial court ordered Peterson to be responsible for the delinquent real estate taxes on the home in Florida, but otherwise denied Baird-Peterson's request for compensation for certain expenses related to the Florida home. The trial court further ordered that the \$10,000 balance in cash assistance benefits should not have been treated as a joint marital debt. Rather, it provided that the State of Michigan may pursue collection from Peterson for past cash assistance benefits paid to Baird-Peterson and the children and Baird-Peterson does not have to reimburse him.

In December 2013, the trial court entered a judgment of divorce consistent with its prior orders and findings.

Peterson appealed the trial court's judgment to this Court in January 2014.

II. MATHER INN BUSINESS

A. STANDARDS OF REVIEW

We first address Peterson's claim that the trial court erred when it failed to include Baird-Peterson's interest in the Mather Inn business as part of the marital estate. When reviewing a trial court's dispositional rulings in a judgment of divorce, this Court first reviews for clear error the trial court's findings of fact and then determines "whether the dispositive ruling was fair and equitable in light of those facts." *Sparks v Sparks*, 440 Mich 141, 151-152; 485 NW2d 893 (1992). A factual finding is clearly erroneous if, after a review of the entire record, we are left with a definite and firm conviction that a mistake was made. *Beason v Beason*, 435 Mich 791, 805; 460 NW2d 207 (1990). Because the trial court's dispositional rulings involve an exercise of discretion, this Court will affirm the trial court's dispositional ruling unless we are "left with the firm conviction that the division was inequitable." *Sparks*, 440 Mich at 152.

B. ANALYSIS

On appeal, Peterson argues that the trial court should have included Baird-Peterson's interest in Mather Inn Enterprises, LLC as part of the marital estate and divided it accordingly. Specifically, he maintains that the trial court clearly erred when it found that Baird-Peterson had no interest in the business on the basis of her testimony that she believed she lost her interest when she filed for divorce.

In its August 2013 findings, the trial court stated that there was insufficient evidence to support Peterson's proposed valuation for the business at \$100,000. The court also stated that it was unclear whether Baird-Peterson still had an interest in the business. Nevertheless, the trial court did not find that her business interest, if any, was not part of the estate; rather, it found that the business had no present value. It also found that Baird-Peterson invested \$30,000 of marital funds into the business and provided that, should Baird-Peterson eventually realize a return on the investment, she had to reimburse Peterson for his half of the investment. Consistent with these findings, in the December 2013 judgment, the trial court actually awarded whatever interest Baird-Peterson may have in the business to Baird-Peterson and ordered her to reimburse Peterson if she "realizes a return on the marital portion of this investment."

Because the trial court actually included the interest at issue in the property division, Peterson's argument to the contrary is inapposite. Moreover, when examining the testimony and evidence from the hearing, it is evident that the trial court did not clearly err when it determined that this interest had no present value and that its dispositional ruling on this asset was equitable.

At the divorce hearing, Baird-Peterson testified that she acquired a 51% interest in the business that owns the Mather Inn. She stated that the members' agreement, however, provided that she would lose her interest—without compensation—if she filed for divorce. She, for that reason, testified that she no longer had an interest.

On cross-examination, Baird-Peterson admitted that the Mather Inn was her father's project and stated she returned to Marquette to help him with it. The project fell through and now "nothing is being done at this point." There was once an appraisal wherein the appraiser estimated that the inn would be worth \$1.5 million when completed, but, she testified, the building was never completed: "It's gutted for the most part. There's one floor that—on the top that had been completed, but there's—there's nothing else that's completed on the other floors. When they did the appraisal, they were having a very difficult time giving a value." She said the City of Ishpeming had set the value of the building at \$70,000 and the land at \$19,000 or \$20,000 for tax purposes. But she related that it was her understanding that her shares in the business, if she should retain any after the divorce, would have no value because there were debts owed on the building and there was "not sufficient income from the property to cover the expenses"

The testimony and evidence showed that the business owned real property, but that it was "gutted" and not generating any income. Further, Baird-Peterson testified that the property had expenses that could not be paid. Thus, even if Baird-Peterson had the power to cause the business to be liquidated, it is unclear whether the sale would have covered the business' outstanding liabilities—let alone generate a surplus that could be distributed to the members. Given the paucity of evidence on the nature of Baird-Peterson's interest, if any, and her rights and obligations under the membership agreement, we cannot conclude that the trial court clearly erred when it found that her business interest had no present value that could be divided between the parties. *Beason*, 435 Mich at 805. Consequently, we are not left with the firm conviction that the trial court's division of this asset was inequitable. *Sparks*, 440 Mich at 152.

III. PARENTING TIME

A. STANDARDS OF REVIEW

Peterson argues the trial court erred by failing to provide a specific parenting time plan for him, which was reasonably calculated to promote a strong relationship with his children. This Court must affirm all orders and judgments involving a child custody dispute “unless the trial judge made findings of fact against the great weight of the evidence or committed a palpable abuse of discretion or a clear legal error on a major issue.” MCL 722.28. Accordingly, a trial court’s factual findings underlying its custody determination must be affirmed on appeal “unless the evidence clearly preponderates in the opposite direction.” *Berger v Berger*, 277 Mich App 700, 705; 747 NW2d 336 (2008). When reviewing the trial court’s discretionary rulings in a child custody dispute, this Court must affirm the trial court’s exercise of discretion unless it “is so palpably and grossly violative of fact and logic that it evidences a perversity of will, a defiance of judgment, or the exercise of passion or bias.” *Id.* The same standards apply to the trial court’s parenting-time order. *Id.* at 716.

B. ANALYSIS

The trial court was obligated to grant Peterson parenting time “in accordance with the best interests of the [children]” and to grant it “in a frequency, duration, and type reasonably calculated to promote a strong relationship between the [children] and the parent granted parenting time.” MCL 722.27a(1). At the hearing, a significant issue was whether there was evidence to support Baird-Peterson’s allegations that Peterson sexually abused the children. The trial court heard the evidence and reviewed the documentary evidence from the various investigations and found that the children were “severely emotionally damaged,” but that there was insufficient evidence “to conclude that the father engaged in sexual abuse.” Indeed, the court found that Baird-Peterson’s testimony posed “some credibility questions.” It nevertheless recognized that, given Baird-Peterson’s beliefs about Peterson, the “parties cannot possibly act as joint custodians” and it would not be in the children’s best interests to travel to Florida for parenting time.

Even though the trial court found that Peterson did not sexually abuse the children, the trial court found fault with Peterson’s actions during the course of the breakdown in the marital relationship. It explained that, notwithstanding Baird-Peterson’s decision to move the children to Michigan, Peterson had done nothing to try and remain involved in the children’s lives: “the father has essentially abandoned the children for three years. The children now live in Michigan and have no relationship with their father.” On the basis of this finding and the finding that the children have “severe emotional problems,” the trial court determined that Peterson’s parenting time should—at first—be quite limited. Specifically, it provided that Peterson “may resume” spending parenting time with the children, but the time should, until further order, be in Michigan, under supervision, and not overnight.

Peterson now contends the trial court’s finding that he abandoned his children was against the great weight of the evidence. He maintains the evidence showed that Baird-Peterson prevented him from having a relationship with the children over the three years preceding the hearing by removing them from the state and impeding his ability to interact with them. Because

his parenting time will be subject to Baird-Peterson's discretion, he contends, it necessarily is not calculated to promote a strong relationship with the children.

Peterson testified at the hearing that he never sexually abused his children and that he cooperated with the investigations in Florida. The investigators, he related, also determined that the allegations were unsubstantiated. He admitted that he had not seen his children, but stated it was not his choice: Baird-Peterson moved them to Michigan and "wasn't going to let me see them." She required him to confess to sexually abusing his children before she would allow him to interact with the children, which he would not do. He agreed that Baird-Peterson actually believes that he molested the children and he agreed that he has not had a relationship with his children "since May of 2010." But he emphasized that the only reason he did not have a relationship with them was because Baird-Peterson prevented him from doing so.

On cross-examination, Peterson admitted that he did not take any specific steps to defend himself from Baird-Peterson's accusations. He explained that he did not do so because he "knew all the allegations were false." He also agreed that the children had emotional issues, but stated his belief that Baird-Peterson traumatized the children through her actions. Peterson said he did not contact the children's counselor to give his version of events because Baird-Peterson's "influence convincing people of things is very good." Moreover, he stated, the "allegations were unfounded. Why would I need to respond to them?"

Peterson testified on cross-examination that he had refused to provide any financial support for the family after Baird-Peterson left—he did not pay child support until ordered to do so by the court. He also has not paid any of the children's medical expenses. He did not file for divorce or custody after Baird-Peterson left because he thought "we could work things out." He refrained from having any contact with his children because of the "continued allegations" and because he felt that insufficient time had passed since the allegations to try and "reconnect." He also could not "afford" to have contact with his children. When specifically asked what he had done to try and help the children, he candidly admitted: "I didn't do anything." He even admitted that he did not send the children any birthday cards; he chose not to send them because he did not believe Baird-Peterson "would show them to them anyway." Finally, he stated he did not feel that he should have to pay any of the children's medical expenses because Baird-Peterson caused the children to lose medical coverage by moving them from Florida.

Although Baird-Peterson moved the children to Michigan and stated that she would not allow Peterson to have physical contact with the children unless he admitted to abusing them, Peterson could still have made efforts to participate in his children's lives, had he so desired. Even if he felt it was inappropriate to vindicate his rights in court, Peterson could have tried to support his children financially. He also could have tried to communicate with them by phone, through letters, and could have sent them cards and gifts. But, as he stated, he did nothing to help his children. He did nothing despite his own belief that Baird-Peterson was traumatizing the children. Even accepting that Baird-Peterson significantly curtailed Peterson from participating in his children's lives during the period at issue, there is simply no record evidence to show that Peterson was committed to participating in his children's lives. Therefore, on this record, we cannot conclude the trial court's finding that Peterson essentially abandoned his children was against the great weight of the evidence. *Berger*, 277 Mich App at 705.

In addition, the trial court did not abuse its discretion when it provided that Peterson should be able to resume parenting time, gradually over time, and while supervised in this state, without providing greater detail. The record supported the trial court's findings that the children had emotional problems—from whatever source—and that it would not be in their best interests to have parenting time in Florida. And the evidence that Peterson had over a period of years refused to participate in his children's lives, in any way, made it difficult for the trial court to fashion a more definite plan. Even Peterson testified at the hearing that he did not believe that he would be able to just resume parenting after his long absence from the children's lives; there would need to be "a transition period" and they would need to work "through an objective counselor." Considering the totality of the situation, the trial court's decision to provide for generic parenting time subject to further court order—that is, to provide an undefined period for the transition—did not amount to an abuse of discretion. *Id.* The trial court's judgment provided Peterson with an opportunity to demonstrate his commitment to parenting time and left open the possibility that it could be expanded. That decision, on this record, was adequate to meet the requirements of MCL 722.27a(1).

There were no errors warranting relief.

Affirmed.

/s/ William B. Murphy

/s/ David H. Sawyer

/s/ Michael J. Kelly